

# Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**March 17, 2016 at 10:00 a.m.**

1. [15-90906](#)-E-7 NEIL/HEIDI GONZALEZ MOTION FOR RELIEF FROM  
MDE-1 Eliyahu Y. Kaplunovsky AUTOMATIC STAY  
2-18-16 [[36](#)]

U.S. BANK, N.A. VS.

DISCHARGED: 3/2/16

**Final Ruling:** No appearance at the March 17, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on February 18, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief From the Automatic Stay is granted.**

U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4117 Royal Windsor Drive, Salida, California (the "Property"). Movant has provided the Declaration of Jeff Branham to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Branham Declaration states that there are 5 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$13,188.30 in post-petition payments past due. The Declaration also provides evidence that there are 33 pre-petition payments in default, with a pre-

**March 17, 2016 at 10:00 a.m.**

petition arrearage of \$83,391.18.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$469,018.81 (including \$469,018.81 secured by Movant's first deed of trust), as stated in the Branham Declaration and Schedule D filed by Neil Gonzalez and Heidi Gonzalez ("Debtor"). The value of the Property is determined to be \$257,893.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Debtor was granted a discharge in this case on March 2, 2016. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by U.S. Bank National Association ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow U.S. Bank National Association, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust

deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 4117 Royal Windsor Drive, Salida, California.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Neil Gonzalez and Heidi Gonzalez ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived for cause shown by Movant.

No other or additional relief is granted.

2. [14-91408-E-7](#) ALEJANDRA LOPEZ AND JOSE MOTION FOR RELIEF FROM  
DJD-1 GUTIERREZ AUTOMATIC STAY  
Pro Se 2-23-16 [[34](#)]  
SETERUS, INC. VS.  
DISCHARGED: 2/11/15

**Tentative Ruling:** The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on February 24, 2016. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Seterus, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2909 East Huntington Boulevard Suite 101, Fresno, California (the "Property"). Movant has provided the Declaration of Holley Caldwell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Caldwell Declaration states that there are 22 post-petition defaults in the payments on the obligation secured by the Property, with a total of

\$12,824.06 in post-petition payments past due. The Court notes Movant's Information Sheet conflicts with the Caldwell Declaration, as it claims only 16 delinquent post-petition payments. Dckt. 38. The sheet also states that Debtor owes a pre-petition arrearage of \$6.00.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$75,027.96, including \$75,027.96 secured by Movant's first deed of trust, as stated in the Caldwell Declaration and Schedule D filed by Alejandra Rosa Lopez and Jose Dejesus Gutierrez ("Debtor"). The value of the Property is determined to be \$50,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Debtor was granted a discharge in this case on February 11, 2015. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Seterus, Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Seterus, Inc., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable

nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 2909 East Huntington Boulevard Suite 101, Fresno, California.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Alejandra Rosa Lopez and Jose Dejesus Gutierrez ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

No other or additional relief is granted.

3. [15-90511](#)-E-7 CARLOS/BRENDA VILLES CAZ MOTION FOR RELIEF FROM  
APN-1 Ashley R. Amerio AUTOMATIC STAY  
1-19-16 [[22](#)]  
  
SANTANDER CONSUMER USA, INC.  
VS.  
DISCHARGED: 9/23/15

**Final Ruling:** No appearance at the March 17, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 58 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief From the Automatic Stay is granted.**

Carlos H. Villescaz and Brenda Louise Villescaz ("Debtor") commenced this bankruptcy case on September 23, 2015. Santander Consumer USA INC. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Dodge Durango, VIN ending in 4641 (the "Vehicle"). The moving party has provided the Declaration of Jorge Escalante to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Escalante Declaration provides testimony that Debtor has not made 4 post-petition payments, with a total of \$2,500.06 in post-petition payments past due. The Declaration also provides evidence that there are 0 pre-petition payments in default, with a pre-petition arrearage of \$0.00.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$25,737.37, as stated in the Escalante Declaration, while the value of the Vehicle is determined to be \$23,375.00, as stated in Schedules B and D filed by Debtor.

Debtor has filed an non-opposition in response to Movant's Motion for

Relief.

## **RULING**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). This is additionally supported by the Debtor's non-opposition.

Debtor was granted a discharge in this case on September 23, 2015. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Santander Consumer USA Inc., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Santander Consumer USA Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Dodge Durango ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief

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from the automatic stay as to Carlos H. Villescaz and Brenda Louise Villescaz ("Debtor"), the discharge having been granted in this case, the motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived.

No other or additional relief is granted.

4.    15-91122-E-7    RORY COLDING AND KARRI    MOTION FOR RELIEF FROM  
         APN-1            WATKINS            AUTOMATIC STAY  
                         Ashley R. Amerio            1-19-16 [[13](#)]  
         SANTANDER CONSUMER USA, INC.  
         VS.

**Final Ruling:** No appearance at the March 17, 2016 hearing is required.

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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 58 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Rory Lamont Colding and Karri Monique Watkins ("Debtor") commenced this bankruptcy case on November 20, 2015. Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Dodge Avenger, VIN ending in 5691 (the "Vehicle"). The moving party has provided the Declaration of Jorge Escalante to introduce evidence to

authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Escalante Declaration provides testimony that Debtor has not made 2 post-petition payments, with a total of \$1,075.73 in post-petition payments past due. The Declaration also provides evidence that there are 0 pre-petition payments in default, with a pre-petition arrearage of \$0.00.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$19,230.15, as stated in the Escalante Declaration, while the value of the Vehicle is determined to be \$11,450.00, as stated in Schedules B and D filed by Debtor.

Debtor has filed a non-opposition in response to Movant's Motion for Relief. Dckt. 19.

### **RULING**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Santander Consumer USA Inc., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Debtor was granted a discharge in this case on September 23, 2015. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Santander

Consumer USA Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Dodge Avenger ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Rory Lamont Colding and Karri Monique Watkins ("Debtor"), the discharge having been granted in this case, the motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

5. [16-90022-E-7](#) PAUL/MICHELE JOHNSON  
APN-1 Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-18-16 [[26](#)]

WELLS FARGO BANK, N.A. VS.

**Final Ruling:** No appearance at the March 17, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (Pro Se), Chapter 7 Trustee, and Office of the United States Trustee on February 18, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion for Relief From the Automatic Stay is granted.</b></p>
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Paul Walter Johnson and Michele Laura Johnson ("Debtor") commenced this bankruptcy case on January 13, 2016. Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Kia Forte, VIN ending in 2879 (the "Vehicle"). The moving party has provided the Declaration of Kiel Maples to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Maples Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$400.45 in post-petition payments past due. The Declaration also provides evidence that there are 2 pre-petition payments in default, with a pre-petition arrearage of \$924.71.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$17,478.59, as stated in the Maples Declaration, while the value of the Vehicle is determined to be \$7,800.00, as stated in Schedules B and D filed by Debtor.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. Dckt. 29. Though the NADA valuation is attached as an Exhibit, it is not properly authenticated.

**RULING**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Wells Fargo Bank, N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2014 Kia Forte ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

6. [15-91126-E-7](#) MARK CONNELLY  
MET-1 Christian J. Younger

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
1-29-16 [[12](#)]

BANK OF THE WEST VS.  
DISCHARGED: 2/24/16

Final Ruling: No appearance at the March 17, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on January 29, 2016. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Bank of the West ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5566 10th Street, Keyes, California (the "Property"). Movant has provided the Declaration of Catherine Worth to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Worth Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,370.66 in post-petition payments past due. The Declaration also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of \$2,741.32.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$141,013.01 (including \$102,438.20 secured by Movant's second deed of trust), as stated in the Worth Declaration and Schedule D filed by Mark Allan Connelly ("Debtor"). The value of the Property is determined to be \$140,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Debtor was granted a discharge in this case on February 24, 2016. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Bank of the West ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Bank of the West, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 5566 10th Street, Keyes, California.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Mark Allan Connelly ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

7. [15-91147-E-7](#) RICHARD/DEBBIE ROCK MOTION FOR RELIEF FROM  
TC-43 Lucas B. Garcia AUTOMATIC STAY  
2-17-16 [[13](#)]  
KEYPOINT CREDIT UNION VS.

Final Ruling: No appearance at the March 17, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on February 17, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief From the Automatic Stay is granted.**

Keypoint Credit Union ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5827 Filbert Avenue, Orangevale, California (the "Property"). Movant has provided the Declaration of Megan Pieracci to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Pieracci Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$3,339.02 in post-petition payments past due. The Declaration also provides evidence that there are 11 pre-petition payments in default, with a pre-petition arrearage of \$18,035.97.



From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$452,027.17 (including \$327,765.17 secured by Movant's first deed of trust), as stated in the Pieracci Declaration and Schedule D filed by Richard Lawrence Rock and Debbie Lynn Rock ("Debtor"). The value of the Property is determined to be \$380,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Debtor was granted a discharge in this case on March 8, 2016. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Keypoint Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Keypoint Credit Union, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 5827 Filbert Avenue, Orangevale, California.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks

relief from the automatic stay as to Richard Lawrence Rock and Debbie Lynn Rock ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

No other or additional relief is granted.

8. [15-90557-E-7](#) EDDIE/MARIA ARMSTRONG MOTION FOR RELIEF FROM  
KGH-1 Brian S. Haddix AUTOMATIC STAY  
1-26-16 [[72](#)]  
CONSUMER PORTFOLIO SERVICES,  
INC. VS.

**Final Ruling:** No appearance at the March 17, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 7 Trustee on January 26, 2016. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Eddie Armstrong and Maria G. Armstrong ("Debtor") commenced this bankruptcy case on June 4, 2015. Consumer Portfolio Services, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Chevrolet Impala, VIN ending in 2753 (the "Vehicle"). The moving party has provided the Declaration of Angelica Correa to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Correa Declaration provides testimony that Debtor has not made 4 post-petition payments, with a total of \$1,730.06 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this

Motion for Relief, the debt secured by this asset is determined to be \$18,444.74, as stated in the Correa Declaration, while the value of the Vehicle is determined to be \$8,350.00, as stated in Schedules B and D filed by Debtor.

#### **RULING**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Consumer Portfolio Services, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Consumer Portfolio Services, Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Chevrolet Impala ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

9. [12-92570-E-12](#) COELHO DAIRY  
DMW-2 Thomas O. Gillis

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-4-16 [[600](#)]

WESTAMERICA BANK VS.

**Tentative Ruling:** The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, and Office of the United States Trustee on February 4, 2016. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

<p><b>The Motion for Relief From the Automatic Stay is denied without prejudice.</b></p>
--

Westamerica Bank ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4500 Langworth Road, Modesto, California (the "Property"). Movant has provided the Declaration of Rhonda Speelman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Speelman Declaration states that there are post-petition defaults in the payments on the obligation secured by the Property, with a total of \$35,846.88 in post-petition payments past due.

**TRUSTEE OPPOSITION**

Chapter 12 Trustee, Jan Johnson, filed an opposition to this instant motion on February 26, 2016, asserting that all arrears to Movant have been satisfied thus far to the total sum of \$174,137.60. Trustee notes there were disagreements in the amount owed but on October 16, 2015, Trustee recalculated the arrears and sent notice to both Debtor and Movant regarding the revised calculations. Trustee informed both parties to send notification of any objections no later than November 3, 2015. Trustee maintains no responses were received. Based on those calculations, Trustee has paid the Movant all arrears and continues to pay timely monthly payments.

#### **DEBTOR'S OPPOSITION**

Debtor, Coelho Farms, filed an opposition to this instant motion on March 3, 2016, asserting that he is not behind on plan payments and does not owe Movant post-petition or pre-petition arrears. Debtor joins Chapter 12 Trustee in opposition to Movant's claim. Debtor requests a Evidentiary Hearing to determine if any arrearage exists.

#### **MOVANT'S REPLY TO TRUSTEE**

Movant filed a response to Trustee's Opposition on March 4, 2016, asserting that Movant and Trustee are in agreement as to the amount that has been paid. However, Movant denies that all arrears have been paid and claims that Debtor is in default for \$35,846.88. Movant also maintains that it did respond to Trustee in regards to the October 16, 2015 revised calculations.

The Movant asserts that, as of February 28, 2016, the Plan arrearages, excluding attorney fees and costs, totaled \$36,058.36, broke down as follows:

1. For Loan number 623-31163, monthly payments due pursuant to the Plan, consisting of principal and interest, are \$4,217.55 per month.
  - a. Between June of 2014 and February of 2016, 21 such payments have come due, for a total of \$88,568.55.
  - b. Pursuant to the Plan, the pre-confirmation arrearage on this loan totaled \$75,481.77.
  - c. Accordingly, as of February 28, 2016, the Movant was owed \$164,050.32.
  - d. As of the end of February 2016, the Movant has been paid on loan number 623031163 \$149,258.15. Accordingly, the Movant argues that an unpaid balance of \$14,982.17 remains.
2. For Loan number 623-31297, the amount of monthly principal and interest payments due pursuant to the confirmed Plan was \$1,278.42.
  - a. 21 Monthly payments of \$1,278.42 came due between June of 2014 and February 2016 for a total of \$26,846.82.
  - b. Pre-confirmation arrearages on this loan totaled \$1,334.56. The aggregate of these sums is \$28,181.38.

- c. The Movant has received post-confirmation payments of \$6,915.19.
- d. Consequently, the total balance still owing on account of this loan as of February 28, 2016 totaled \$21,266.19, consisting of unpaid principal of \$4,571.78, and accrued but unpaid interest of \$16,694.41.

#### **MOVANT'S REPLY TO DEBTOR**

Movant filed a response to Debtor's Opposition on March 8, 2016 asserting that Debtor's opposition is non compliant under Local Rule 9013-1. Movant claims "Debtor's response is unsupported by evidence, authority or reason. Debtor has not submitted a declaration, brief or addressed Movant's argument.

#### **DISCUSSION**

The disputes has its roots in the fundamental provisions of the Chapter 12 Plan. Movant asserts that the Plan interest rates for its claim does not apply to the post-petition, pre-confirmation period of time. Movant further alleges that the Trustee asserts that the plan interest rate applies to post-petition interest from the date of filing, not merely since confirmation of the plan.

The Motion does not state with particularity the provisions of the plan which Movant asserts governs the interest rate calculation. However, in the Points and Authorities, Movant directs the court to paragraph 2 of the Order Confirming the Chapter 12 Plan, which states,

"2. The claim of West America Bank, secured by real property, will be amortized over a period of 25 years at an annual interest rate of 6.4% and 6.5% as provided in the Promissory Notes, with the loan being due in full seven years from confirmation. All post-petition defaults are to be cured within 60 days of confirmation. The Creditor will retain its lien."

Order, Dckt. 507. The Order lists Debtor's counsel in the upper lefthand corner and it has been approved as to form by Movant's counsel.

Other than arguing that the plan interest rate does not apply pre-confirmation, the Motion and Points and Authorities does not provide the court with any tools for interpreting this language.

The Points and Authorities, p. 3:15-19, states that the Amended Chapter 11 Plan states that Movant's was "about \$899,500" as of confirmation. The Plan provides for post-petition defaults to be cured within 60 days of confirmation. The Plan having been confirmed by the order filed on May 22, 2016. Thus, the cure was to be made by July 21, 2014 - twenty months ago.

Movant does not provide the court with a simple, clear spreadsheet showing the defaults, computation of monies due, and payments received. Instead, the relatively simple financial issues are woven into the narrative discussion.

#### **Trustee's Opposition**

In his Opposition, the Trustee states how he computed the post-petition default amount as of the May 2014 confirmation. He also makes reference to an August 14, 2014 letter from Movant's counsel stating that the Trustee had made an overpayment to Movant. The Opposition does not reference the court to any exhibits which would be a copy of the August 2014 letter or other letters referenced in the Opposition.

The Trustee has filed Exhibits with the opposition, but the stated letters are not included. Dckt. 610.

In responding to the Trustee's Opposition, Movant provides a short narrative arguing the Trustee's calculations are wrong. Again, no simple spread sheet showing how the post-petition arrearage was computed and how the payments have been applied was provided to the court.

### **Debtor's Opposition**

The Debtor's opposition is nothing more than a denial and a request for an evidentiary hearing. Debtor provides no theory of opposition, computation of payments, or evidence in opposition to the Motion. The court does not delay ruling on motions because a party states "I oppose."

### **RULING**

From the Plan and Confirmation Order approved by Movant and Debtor (the Chapter 12 Trustee did not approve the form of the Order), the Court is presented with the following:

- A. The Class 2.2 Claim of Westamerica Bank was "about" \$889,500.00 as of confirmation. Plan, attached to Order Confirming, pg. 5:7-12; Dckt. 507.
- B. The pre-confirmation, post-petition defaults were to be cured within sixty days of confirmation. Order, pg. 2:10-15; *Id.*
- C. On June 30, 2014, Movant received a payment of \$107,800.00 to be applied to the pre-confirmation, post-petition defaults. Motion, p. 1:27.5, 28:1.
- D. The post-confirmation regular note payments are not clearly stated in any declaration.
- E. The declaration of Rhonda Speelman is provided, in which she advises the court that exhibits are attached to her declaration, and the court can read the exhibits and calculate why Movant wins the Motion. (The court paraphrasing the testimony.)

This process and declaration are deficient for several reasons. As the attorneys who practice in the Eastern District are well aware, the motion, points and authorities, opposition, each declaration, and the exhibits (which may be filed as one exhibit document) are filed as separate documents. L.B.R. 9004-1 and the Revised Guidelines for Preparation of Documents. This witness has bypassed the Local Rules, choosing to attach her exhibits to her declaration so that they are hidden on the docket.

Second, the witness is careful not to testify who prepared the exhibits or that she has any personal knowledge concerning the exhibits. Dckt. 617. This declaration references the court to the witnesses prior declaration, which also has exhibits attached to the declaration and hidden on the docket.

The Chart attached to the second declaration provides the following information:

Loan	Monthly Payment	
xxx-1163	\$4,894.37	
payments due	20(October 2012 - May 2014)	\$97,887.40
payments made post-petition	13 payments of \$1,200	(\$15,600.00)
late charges		
xxx-1297	\$1,362.28	
payments due	20(October 2012 - May 2014)	\$27,245.60
payments made post-petition	13 payments of \$2,100	(\$27,300.00)
		-----
	<b>Total Pre-Petition Arrearage Due At Confirmation</b>	<b>\$82,233.00</b>

F. Movant was paid \$107,800.00 for the post-petition, pre-confirmation arrearage, which overpaid the arrearage by \$25,567.00. The actual overpayment may be lower, as there appear to be late charges. But it is not clear how they are computed, and at most, are less than \$1,000.00.

G. Therefore, there is no pre-confirmation, post-petition default.

Based on the evidence presented, the Motion is denied, without prejudice. The Motion is denied without prejudice due to the incomplete nature of the information and evidence presented.

In refiling the Motion, if necessary, the court is confident that Movant and the Chapter 12 Trustee can prepare a chart showing the post-petition, pre-confirmation payments asserted to be due, those payments for which there is agreement, and those payments which the Chapter 12 Trustee and Debtor dispute the contention. That will then lead to a clear presentation of issues for the court of the amount of the claim and what arrearage existed.



The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Westamerica Bank having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

10. [15-91178-E-7](#) MICHAEL TOBIN  
EAT-1 David C. Johnston

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-9-16 [[55](#)]

NATIONSTAR MORTGAGE, LLC VS.

**Final Ruling: No appearance at the March 17, 2016 hearing is required.**

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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on February 9, 2016. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1717 East Hawkeye Avenue, Turlock, California (the "Property"). Movant has provided the Declaration of Patrick Valliere to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Valliere Declaration states that there are 1 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,799.25 in post-petition payments past due. The Declaration also provides evidence that there are 8 pre-petition payments in default, with a pre-petition arrearage of \$22,367.80.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$755,481.58 (including \$229,929.58 secured by Movant's first deed of trust), as stated in the Valliere Declaration and Schedule D filed by Michael Patrick Tobin ("Debtor"). The value of the Property is determined to be \$700,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the

bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Nationstar Mortgage LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Nationstar Mortgage LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1717 East Hawkeye Avenue, Turlock, California.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived for cause shown by Movant.

No other or additional relief is granted.

11. [15-91192-E-7](#) DAVID GARCIA  
RLM-1 Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-19-16 [[14](#)]

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY VS.

**Tentative Ruling:** The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (Pro Se), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on February 19, 2016. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion for Relief From the Automatic Stay is denied without prejudice.</b></p>
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State Farm Mutual Automobile Insurance Company ("Movant") seeks relief from the automatic stay with respect to the property commonly known as Alliance United Insurance Company Policy No. MNS3175802 (the "Policy").

Pursuant to Federal Rule of Bankruptcy Procedure 2002(b), twenty eight

day notice is required to all parties in interest for filing objections and the hearing to consider approval of a disclosure statement or for filing objections and the hearing to consider confirmation of a chapter 11 plan. By the court's calculation, only 20 days' notice has been provided in this case. This is insufficient notice and cause to deny the "Motion."

The moving party filed the motion, information sheet, points and authorities, declaration and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Local Bankruptcy Rule 9004(a) and *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rules 9004(a), 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court. (Some running hundreds of pages.) It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents which can then be used by the court.

Therefore, because the Movant failed to provide sufficient notice, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from Automatic Stay pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

12. [15-90893](#)-E-7 FRANCISCO SANCHEZ AND MOTION FOR RELIEF FROM  
WFM-1 ALMA DOMINGUEZ AUTOMATIC STAY  
Pro Se 1-25-16 [[30](#)]  
CITIMORTGAGE, INC. VS.  
DISCHARGED: 1/19/16

**Tentative Ruling:** The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter7 Trustee, and Office of the United States Trustee on January 25, 2016. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

<p><b>The Motion for Relief From the Automatic Stay is denied without prejudice.</b></p>
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The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. Secured Creditor CitiMortgage, Inc. ("Movant"), by and through its attorney of record, hereby moves for an order terminating the 11 U.S.C. § 362(a) automatic stay as it applies to Movant and the real property located at 44129 Beech Avenue,

Lancaster, CA 93534 (the "Property"), pursuant to 11 U.S.C. § 362(d) and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

- B. The Motion is based on the following Memorandum of Points & Authorities and the Notice of Motion for Relief from Automatic Stay and supporting Declarations filed concurrently herewith, all other pleadings and papers on file herein, and upon such oral and documentary evidence as may be presented by the parties at the hearing.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the automatic stay should be terminated. This is not sufficient. It appears that the Movant has buried the grounds for the Motion in the Memorandum of Points and Authorities, which is improper under Fed. R. Bankr. P. 9013.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2)), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff(or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion),

abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

*Weatherford*, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's Federal Practice, para. 7.05, at 1543 (3d ed. 1975).

*Martinez v. Trainor*, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support



exists for such "postulations."

Additionally, the pleading title motion is a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "Mothorities") in which the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Defendant. The court has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide those services for the moving party.

The court has also observed that the more complex the Mothorities in which the grounds are hidden, the more likely it is that no proper grounds exist. Rather, the moving party is attempting to beguile the court and other party.

The Motion also misstates that Movant can, and will, be presenting additional evidence up to the date of the hearing. Such "rolling presentation of evidence" is not permitted under the Local Bankruptcy Rule. See L.B.R. 9014-1, motion practice.

Therefore, because the Movant failed to state with particularity the grounds for the relief sought, the Motion is denied without prejudice

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from Automatic Stay pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.